(21) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: - HON. MR. L.C. BHADOO AND
HON. MR.DHIRENDRA MISHRA, JJ.

CRIMINAL APPEAL NO. 2307 OF 2000

Sriram Mochi Alias Faikan Sai

VERSUS

State of Madhya Pradesh (Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI JUSTICE L.C. BHADOO

Sd/-
L.C.BHADOO
Judge

24 /03/2007

POST FOR JUDGMENT ON 26-03-2007

Sd/-
DHIRENDRA MISHRA
Judge

23/03/2007

(22)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2307 of 2000

APPELLANT	Sriram Mochi alias Faikan Sai, son of Samaru Mochi, aged 45 years, resident of Raahdih (Rehat), P.S. Pali
Vs	
RESPONDENT	State of Madhya Pradesh (now Chhattisgarh), through Police Station, Katghora, District Korba.

Present: -

Mr. R.K. Jain, Advocate: For the appellant.

Mr. D.K. Gwalre, Addl. Public Prosecutor For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR.DHIRENDRA MISHRA, JJ.

J U D G M E N T

(Delivered on 26th March, 2007)

Following judgment of the Court was delivered by Dhirendra Mishra, J:-

1. This criminal appeal under Section 374 (2) of the Code of Criminal Procedure is directed against the judgment dated 26th July, 2000 passed in Sessions Trial No.72/2000 by the Additional Sessions Judge & Special Judge under the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989, Bilaspur whereby learned Additional Sessions Judge after holding the appellant guilty for commission of offence under Sections 363 & 302 of the Indian Penal Code (for short 'the IPC'), sentenced him to undergo R.I. for three

years, to pay a fine of Rs.500/- & R.I. for life respectively with usual default clause.

2. Case of the prosecution, in brief, is that on 22.8.1999 appellant went to the house of complainant Rajaram, informed him that his sister & brother-in-law are sick and asked him to send his daughter Samarin Bai for their nursing. On this pretext, he took his 10 years old daughter Samarin Bai and instead of taking her to Rahadih (Rehat) aimlessly wandered with her throughout the day and in the evening took her in the secluded place, forcibly raped her and thereafter, murdered her by throttling near ash dam in Village Lotlota fearing that she may narrate the incident to others. He had also thrown the dead body of Samarin Bai and her wearing apparels. On 28.8.99 complainant Rajaram (PW-8) lodged the report (Ex.P-15) in the Police Station Katghora whereupon the offence under Sections 363 & 366 of the I.P.C. has been registered against the appellant.

3. On 2.10.1999 at about 17.40 hrs memorandum Ex.P-3 of the appellant was recorded on the basis of which, on 2.10.1999 at about 17.45 hrs a lock of long hairs of human head, a torn piece of black colour blouse and sky colour torn piece of frock were taken into possession under Ex.P-5. On the basis of the memorandum on 3.10.1999 at about 11.30 hrs also one blue panty, two torn pieces of frock, similar size green colour Dupatta and small size black colour blouse were seized vide seizure memo Ex.P-4. Plain soil from two different places from the place of incident was taken into possession vide Ex.P-6. One sealed packet containing

underwear & slide of the accused obtained from the hospital were taken into possession vide Ex.P-7. Spot Panchnama of Ex.P-9 was prepared in presence of the witnesses. Seized blouse & panty were identified by complainant Rajaram as the frock & underwear of her daughter Samarin Bai. Accused was sent for medical examination to the Government Hospital, Katghora vide Ex.P-12A where the Assistant Surgeon examined the accused. Report of the doctor is Ex.P-12. Seized wearing apparels and pieces of clothes were also sent to the Assistant Surgeon, Community Health Centre, Katghora under Ex.P-13A for his opinion and the report of doctor is Ex.P-13. Articles seized from the spot were also sent for examination to Assistant Surgeon, CHC, Katghora under Ex.P-14A and report of doctor is Ex.P-14. Merg Intimation was given by the Sub Inspector Shri G.R. Diwan vide Ex.P-16. Hair, four pieces of frock, dupatta, underwear, slide, soil and blouse were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex.P-20 was received.

4. After completing investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Katghora who in turn committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer for trial by learned Additional Sessions Judge & Special Judge, who framed charges under Sections 363, 366, 376 & 302 of the IPC against the appellant. The appellant abjured his guilt. The prosecution in order to establish the charges against the appellant examined 13 witnesses. Statement

of appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication. However, learned Additional Sessions Judge convicted and sentenced the appellant as described above.

5. In the instant case, there is no eyewitness to the incident and even the dead body of Samarin Bai has not been recovered. However, learned trial court has convicted the appellant on the basis of circumstantial evidence.

6. So far as the first charge under Section 363 of the IPC is concerned, the court below relying on the statements of witnesses Rajaram (PW-8), Heeradhan (PW-11), Hiralal (PW-10) Malluram (PW-6), Bandhan (PW-3) & Mohitram (PW-4) has held that the appellant had kidnapped Samarin Bai from the lawful custody of her father Rajaram (PW-8).

7. Learned counsel for the appellant argues that complainant Rajaram (PW-8) had not seen Samarin Bai going with the appellant. He further argues that even according to the prosecution case the complainant had himself sent his daughter with the appellant, therefore, no offence under Section 363 of the IPC is made out.

8. PW-8 Rajaram has stated in his deposition that on Sunday in the month of Sawan the accused came to him by bicycle and said that his sister & brother-in-law are sick, they are under treatment and asked him to send his daughter Samarin Bai. On Monday at about 8.00 a.m. after taking meals, Sriram took Samarin Bai from his

house. On Tuesday, his mother Birsobai came to his house and informed him that accused has not taken his daughter, on which they started searching his daughter and thereafter he lodged missing report in the police station. He has further stated that his brother-in-law Malluram (PW-6) is the step son of accused and at the time of incident, age of his daughter was 10 years. In the cross-examination this witness has stated that he was married since 20 years back, after 4-5 years of marriage his elder daughter born. He has admitted that when Samarin Bai went with the accused he was not at the residence, as he had gone to graze his buffalo and he did not see the accused taking his daughter.

9. PW-11 Heeradhan has stated that last year at the time of Raksha Bandhan, on Sunday accused went to the house of Rajaram and stated that his sister & brother-in-law are sick, they are undergoing treatment and asked Rajaram to send his daughter, whereupon, Rajaram said that he will send his daughter Samarin Bai, who shall look after them. On Monday at about 8-9 a.m., Samarin Bai went with the accused on his bicycle. On the next day, mother of Rajaram came and on being asked, informed that Samarin had not reached Rahadih. She also informed that accused Sriram has also not reached Rahadih. Thereafter, he searched Samarin Bai with Rajaram & Jethu. They went to Rahadih, however wife of Sriram or other family members have not said anything about coming of Sriram to Rahadih. In the cross-examination, this witness has categorically denied the suggestion that this witness did not see Samarin Bai going with accused Sriram. Other witnesses namely

Bandhan (PW-3), Mohitram (PW-4) & Malluram (PW-6) have also stated that the accused took Samarin Bai on the false pretext that his sister & brother-in-law are sick. Thus, from the evidence of these witnesses we are of the considered opinion that the court below has rightly held the appellant guilty under Section 363 of the IPC, as the accused took a minor Samarin Bai from the lawful custody of her guardian Rajaram by practicing fraud and therefore, the argument of learned counsel for the appellant that the accused took Samarin Bai with the consent of Rajaram, therefore, it does not constitute an offence under Section 363 of the IPC, has no force because the consent was obtained by practicing fraud and as such, it is not a consent in the eyes of law.

10. The second question is whether the prosecution has been able to establish that Samarin Bai died homicidal death and appellant was responsible for causing death of Samarin Bai.

11. PW-3 Bandhanram has stated that last year at the time of Raksha Bandhan he had gone to the house of Rajaram, Rajaram informed him that Sriram had taken his daughter to Rahadih as his sister and brother-in-law are sick. He has further stated that Rajaram informed him that his daughter Samarin Bai and accused Sriram are missing, you search and bring them to me, whereupon he advised Rajaram to lodge report in the police station. After 30-35 days, he met Sriram in Village Sekar of Police Station Ratanpur. He had cautioned his community people that whenever Sriram comes, they should inform him. When Sriram visited

the house of a person of community, boys surrendered him and brought him to me at Village Batra. On enquiry, Sriram told that he has kept one girl at Village Belpaar, on which they accompanied him to Village Belpaar, however, they could not trace the girl. Thereafter they took him to Police Station Katghora and handed over him to the police. The police detained them also for two days in the Police Station. On enquiry, Sriram has stated that he has finished the girl in Rakhar Dam Dongri of M.P.E.B. Thereafter they along with Sriram and police inspector went to Dongri, at the place as mentioned by Sriram. On being asked, Sriram stated that dead body of Samarin Bai is in the ash dam near Dongri, he shall take them to that place. Sriram had also stated that he had raped Samarin Bai, thereafter killed her by strangulation and also thrown her underwear and other clothing after tearing it. On the basis of memorandum, one blue colour panty, torn pieces of frock and green colour dupatta were seized. He has also stated that a full size lock of long hair of human head tied in blue colour ribbon, torn piece of black colour blouse and lower half of frock were taken into possession. He has further stated that Rajaram, father of Samarin Bai, had identified the ribbon in which lock of hair was tied to be that of his daughter. Identification memo of Ex.P-10 was prepared in his presence which bears his signature from 'A to A' portion. In the cross-examination, this witness has sated that he resides in Village Batra. Village Lotlota is 30-35 kms far from Village Batra. Accused did not tell anything about the incident in Village Sekar. While going to Village Pali Belpaar from Village Batra also

accused did not state anything. He has further stated that it is correct to say that he himself, Bandhan, Sandhan, Nandlal, Rajaram went to Police Station Katghora where the accused was kept in lock-up. In the police station also accused did not tell any thing to the police, however, on the next day police informed them that accused had told everything to them. He has further stated that when the accused narrated about the incident at that time the police was also present. He has admitted that the clothes seized from the place of incident are commonly found in other places.

12. PW-4 Mohitram has also stated that Rajaram told him in Pali market that accused Sriram had eloped his daughter and since then his daughter is missing. He requested him to inform if he finds Sriram and also requested to find out the whereabouts of accused. He has further stated that Bandhan & Nandlal had caught the accused in Village Sekar and brought him to his house at Village Batra. He had enquired from Sriram about the girl, when he had informed that he has kept a girl in Village Belpaar as his wife, they took him to Belpaar. In Village Belpaar accused did not tell them anything, thereafter they went to Police Station Katghora and in police station accused said that he will not disclose anything in front of Mohitram. Thereafter, they along with Bandhan, accused Sriram, two constables and two police inspectors went to ash-dam, as per information of accused from where accused brought the lock of hair, skirt, blouse & panty. Witness Nandlal (PW-5) has also given similar statement as that of Bandhan & Mohitram. Malluram (PW-6) has stated

that he recognized the accused as he is his step father. He also knew Rajaram and his daughter Samarin Bai. He has further stated that on Tuesday his mother-in-law came to his house and informed him that Sriram has brought the girl on the pretext that you people are sick, on which he told her that they are not sick. However, this witness has stated that no one told anything about accused Sriram and girl Samarin Bai. This witness has been declared hostile.

13. PW-12 G.R. Diwan, Investigating Officer has stated that on 2.10.1999 he interrogated accused Sriram in the presence of witnesses, recorded memorandum Ex.P-3 of the accused and on the basis of information given by the accused a lock of full size hair of human head tied in a blue ribbon and piece of blouse were recovered. On the next day also on the basis of information given by the accused he had discovered blue colour panty and piece of skirt vide Ex.P-4. He has further stated that on 3.10.1999 he had prepared identification memo of seized clothing & hair, which were duly identified by Rajaram as the hair & clothes of his daughter Samarin Bai, who also stated that Samarin Bai had gone away wearing these clothes.

14. Learned counsel for the appellant submits that from the scrutiny of above evidence it emerges that the accused was apprehended by villagers at Village Sekar, thereafter, he was brought to village Batra by the witnesses Bandhan & Nandlal, who took him to police station Katghora, where his memorandum was recorded by the police and on the basis of which lock of long hair of human head tied in ribbon, pieces of skirt, blouse

and a panty were recovered near ash-dam from an open place. It is alleged that the belongings seized from the alleged place of incident were that of Samarin Bai, as the father of Samarin Bai duly identified the same before the witnesses to be belonging of his daughter. However, Rajaram (PW-8) has not stated a word that articles seized from the place of incident near ash-dam were in fact the clothing & hair of Samarin Bai, though he has stated in Para-4 that police took him to village Lotlota to show the place where dead body was lying and therefore, the recovery of articles i.e. hair, piece of clothing on the disclosure statement of accused loses its significance and on the basis of recoveries of above articles, the inference of the court below that the accused after abducting Samarin Bai, committed rape on her, murdered her and thereafter threw her body & clothing on the place of incident is based on conjectures and surmises. The prosecution has failed to establish that Samarin Bai is dead and she died homicidal death. In support of the argument reliance is placed on **2002 Supreme Court Cases (Cri.) 239** between **Sudama Prasad Pandey and others Versus State of Bihar** & **1998 Cr. L.J. 3127 Rup Lal and others Vs. State of Punjab**.

15. On the other hand, learned counsel for the State vehemently argues that even if the corpus delicti is not found during investigation, conviction can still be based on the circumstantial evidence, as recovery of corpus delicti is not one of essential ingredients in a trial for murder. He placed reliance on the judgments of Hon'ble Supreme Court in the matters of **Rama Nand and**

others Vs. The State of Himachal Pradesh reported in **AIR 1981 Supreme Court 738**; **State of W.B. Versus Mir Mohammad Omar and others** reported in **(2000) 8 Supreme Court Cases 382**; **Sucha Singh Versus State of Punjab** reported in **2001 Supreme Court Cases (Cri.) 717** and **Mani Kumar Thapa v. State of Sikkim** reported in **AIR 2002 Supreme Court 2920**.

16. We have heard learned counsel for the parties and gone through the impugned judgment as also the evidence available on record.

17. Conviction under Section 302 of the IPC of the appellant is based on the circumstantial evidence. However, the appellant has been acquitted from the charges under Sections 366 & 376 of the IPC, as the dead body of Samarin Bai was not recovered and there is no evidence available on record to establish that the appellant abducted her with intent to force or seduce to have illicit intercourse. Statement of Rajaram (PW-8), Bandhan (PW-3) & Rambharos (PW-9) regarding confession of committing rape by the appellant has been disbelieved by the trial court. However, the trial court has convicted the appellant on the basis of circumstantial evidence. The circumstances relied upon by the trial court may be summarized as under:-

a. The appellant was last seen in the company of Samarin Bai when she was alive, as he abducted her by practicing fraud.

b. The appellant gave disclosure statement and in pursuance of that one small size blue colour panty,

torn pieces of sky colour frock, lock of full size hairs of human head etc were seized from the place of incident, which were identified by Rajaram (PW-8) on 3.10.1999 on the place of incident.

c. Articles seized from the place of incident i.e. hair, pieces of frock, dupatta, blouse, earth etc contained blood, as per FSL report Ex.P-20.

d. Lastly, extrajudicial confession of the appellant before Rajaram (PW-8), Bandhan (PW-3), Nandlal (PW-5) & Rambharos (PW-9).

18. As per law laid down by the Hon'ble Apex Court in the matters of Sudama Pandey and Rup Lal & others (*supra*) in order to rest conviction based on the circumstantial evidence, the circumstantial evidence must satisfy the following tests:-

(i) The circumstances should form a chain which should point to the guilt of the accused;

(ii) Each fact should be independently established by cogent evidence.

(iii) The proved fact should be wholly consistent with the guilt of accused.

(iv) The circumstances so established must be of such a nature as to rule-out a reasonable likelihood of innocence of the accused.

1st Circumstance:

19. As far as this circumstance is concerned, we have already upheld the judgment of trial court, as the trial court has not committed any illegality in convicting the appellant under Section 363 of the IPC because he took Samarin Bai with him by practicing fraud.

2nd & 3rd Circumstances:

20. As far as the recovery of belongings of the deceased at the instance of accused Sriram is concerned, though the witnesses of memorandum have stated that the statement of appellant was recorded in their presence and thereafter the appellant, witnesses & police personnel went near ash-dam where the articles were seized from the place of incident. However, there is no evidence available on record except the statement of Investigating Officer Shri G.R. Diwan (PW-12), who has stated that Rajaram, father of deceased, accompanied them to the place of incident along with appellant, he identified these articles to be the articles belonging to Samarin Bai, as Samarin Bai while going away with the appellant on the date of incident was wearing that clothing. However, Rajaram himself has not stated a word about the identity of seized articles in his evidence and therefore, in absence of any statement regarding identification of seized articles by Rajaram, the court below was not justified in considering this circumstance as the circumstance against the appellant. Therefore, in our considered opinion the recovery of articles on the memorandum of appellant losses its significance because the same has not been identified as the article of Samarin Bai. So far as the reliance of the court below on the FSL report that certain seized articles contained blood is concerned, since the identity of these articles have not been established, therefore, the presence of blood in the said articles is of no relevance.

4th Circumstance:

21. So far as the extrajudicial confession of the appellant before Rajaram (PW-8), Rambharos (PW-9), Bandhan (PW-3) & Nandlal (PW-5) at Belpaar is concerned, we have closely scrutinized the statement of Rajaram (PW-8), Bandhan (PW-3) & Nandlal (PW-5). These witnesses have nowhere stated in their statement that the appellant made any extrajudicial confession before them at Village Belpaar. Bandhan (PW-3) has stated that on enquiry by the police the appellant has admitted that he killed the girl and he shall take them to the dead body of Samarin Bai. Whereas, Nandlal (PW-5) has been declared hostile, however, neither in his examination-in-chief nor in cross-examination this witness has stated regarding any extrajudicial confession made by the appellant., PW-9 Rambharos has stated that he learnt in the month of Kuanwar that Sriram had murdered Samarin Bai, at that time he was in his home at Dalsagar. He went Village Batra where Nandlal had taken the accused also at Village Batra. Mohitram & Bandhan were with him. On being asked whether he has committed murder, the accused denied. When Bandhanram asked about the girl, he said that he has kept her at Belpaar. Thereafter they went to Belpaar with the accused, however, they did not find the girl there. They again asked the accused there about the girl, at that time he admitted before him, Bandhan, Mohitram & Nandlal that he has murdered the girl. Thereafter, they went to Police Station Katghora, where Sriram was arrested. In the cross-examination this witness has stated that in the first instance Sriram did not disclose anything but on being threatened, he disclosed regarding murder. The

extrajudicial confession before this witness does not inspire confidence firstly because the confession is allegedly made before this witness as also in the presence of witnesses Bandhan, Mohitram & Nandlal, however, as already discussed, other three witnesses have not deposed about any confession by the accused in Village Belpaar in their presence; secondly because this witness has stated that the confession regarding murder was made by the accused only after he was threatened and thirdly because confession is in these words '*I have murdered the girl*. Thus, considering the nature and quality of evidence adduced by the prosecution with regard to the alleged extrajudicial confession by the appellant, the same does not inspire our confidence.

22. In the matter of Ramanand (supra) it has been held that;

> "*..even if the corpus deliciti is not found, conviction can still be based on circumstantial evidence, as the discovery of dead body of the victim bearing physical evidence of violence is merely a rule of caution and has never been considered as the only mode of proving the corpus delicti in murder, as many cases are of such nature where discovery of dead body is impossible*".

However, in Paragraph-27 of the above judgment it has been held that:

> "*.....where the dead body of victim in a murder case is not found, other cogent and*

satisfactory proof of homicidal death of victim must be adduced by the prosecution. Such proof may be by direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be *of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned...."*

In the above cited case, defence of the accused persons was that the victim committed suicide and in those circumstances the Hon'ble Supreme Court held the case of the prosecution proved even after corpus delicti was not found.

23. In the matter of Mani Kumar Thapa (supra) it has been held that;

"In a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of the death

of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. What is therefore required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead may not be traced."

24. In the matter of Sucha Singh (supra) two persons were taken away by armed assailants from their house at night and their dead bodies, studded with gunshot injuries, were found next morning lying near their house and in these circumstances considering that the assailants came armed with AK-47 rifles, took the deceased persons forcibly, within short time sound of gun shots were heard, they did not return to the house in the night, next day morning their dead bodies were spotted on the roadside and they were killed with AK-47 rifles, the Hon'ble Apex Court has held that the prosecution case proved by the circumstantial evidence. The fact of above case is not similar with the case in hand.

25. So far as the law laid down in the matter of State of W.B. Vs. Mir Mohammad Omar (supra) is concerned, in the above judgment it has been held that "*inference regarding existence of one fact against accused can be drawn from another set of proved facts and the burden lies on accused to rebut such inference by virtue of his special knowledge about such fact. Where prosecution*

proved that deceased was abducted with the object of murdering him and was taken out of the place where he was staying by the accused persons and thereafter deceased could not be seen until his dead body was found in a mangled condition soon after the incident, what had happened to the deceased so long he was with the accused persons was known to them alone which they failed to explain" and in these circumstances, drawing presumption under Sections 114, 101 & 106 of the Evidence Act, it was held that "*the accused had murdered the deceased*". However, in the instant case, which is based on the circumstantial evidence, the body of Samarin Bai has not been recovered and prosecution has failed to prove the death of Samarin Bai much less homicidal death.

26. It is true that the prosecution has been able to establish the abduction of Samarin Bai by the appellant and it is also true that the abductor has failed to explain the whereabouts of Samarin Bai to whom he had abducted from the lawful custody of her father Rajaram by practicing fraud. It is also true that the appellant gave false version regarding keeping the girl in village Belpaar, nevertheless, it was incumbent upon the prosecution to establish the death of Samarin Bai by adducing direct evidence or through circumstantial evidence beyond reasonable doubt. It was further incumbent upon the prosecution to establish that Samarin Bai died homicidal death. It is settled law that suspicion howsoever grave cannot take place of proof. We have already held in foregoing paragraphs that except the first circumstance of last seen the

prosecution has failed to prove the other circumstances.

27. We are fortified in our view from the judgment of Hon'ble Apex Court delivered in the matter of **Murlidhar and others Vs. State of Rajasthan** reported in **2005 Cri.L.J 2608** wherein the accused were tried under Sections 120-B/364, 394/397, 302/49 of the IPC for dragging away the victim with intention to put him in danger of being murdered and thereafter murdered him. The Hon'ble Apex Court maintained their conviction under Section 364 of the IPC, but their conviction under Section 302 r/w Section 34 of IPC was set aside with the following observations:-

> "In the result, we are of the view that the prosecution having put forward a case that, what transpired after Ramlal was dragged away by the assailants was within the knowledge of witnesses, utterly failed in proving the said facts. Once this is established, it was not open for the High Court to have fallen back on the rule of burden of proof under Section 106 of the Evidence Act. In fact, as we notice, it was nowhere the case of the prosecution that Section 106 of the Evidence Act applied to the facts on record. The High Court seems to have brought it out on its own, but without any justification. We are, therefore, of the view that the conviction of Murlidhar, Chhaju Ram and Babu Lal s/o Chhaju Ram under Section 364, IPC is

justified and liable to be confirmed, but their conviction under Section 302/34, IPC cannot be sustained and they are liable to be acquitted of the said charges."

28. On the basis of aforesaid discussion, we are of the considered opinion that the prosecution has failed to prove the death of Samarin Bai and therefore, benefit of doubt ought to have been extended to the appellant, as such, judgment of the trial court convicting the appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life is not sustainable.

29. In the result, the appeal preferred by appellant Sriram Mochi is partly allowed while maintaining the conviction and sentence under Section 363 of the IPC. Conviction & sentence of life imprisonment of appellant Sriram Mochi under Section 302 of IPC for causing homicidal death of Samarin Bai is hereby set aside. It is stated that appellant is in jail since 16.10.1999, as such, he has already undergone the sentence imposed upon him under Section 363 of IPC, therefore, it is directed that he be set at liberty forthwith, if he is not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-